

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Dale N. Smith, #90045-132,)	
)	C/A No. 0:05-2260-MBS
Petitioner,)	
)	
vs.)	
)	OPINION AND ORDER
John J. Lamanna, Warden,)	
)	
Respondent.)	
_____)	

Petitioner Dale N. Smith is an inmate in custody of the Federal Bureau of Prisons who currently is housed at FCI-Edgefield. Petitioner, appearing pro se, filed the within petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241, seeking a redesignation of his place of confinement to New Mexico.

This matter is before the court on Respondent's motion to dismiss or, in the alternative, for summary judgment, filed October 14, 2005. Respondent asserts that the within § 2241 petition should be dismissed because Defendant has failed to state a claim upon which relief can be granted. On October 17, 2005, an order was issued pursuant to Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975), advising Petitioner of the dismissal and summary judgment procedures and the possible consequences if he failed to respond adequately. Petitioner filed a response on October 25, 2005, together with a supplemental response on October 31, 2005.

In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this matter was referred to United States Magistrate Judge Bristow Marchant for pretrial handling. On May 12, 2006, the Magistrate Judge issued a Report and Recommendation in which he recommended that Respondent's motion be granted and the § 2241 petition be dismissed. Petitioner filed no objections to the Report and Recommendation.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this court. Mathews v. Weber, 423 U.S. 261, 270 (1976). The court is charged with making a de novo determination of any portions of the Report and Recommendation to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or may recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1). In the absence of objections to the Report, this court is not required to give any explanation for adopting the recommendation. Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983).

The court has carefully reviewed the record and concurs in the recommendation of the Magistrate Judge. Accordingly, Respondent's motion is granted and the case dismissed for failure to state a claim upon which relief can be granted.

IT IS SO ORDERED.

/s/ Margaret B. Seymour
United States District Judge

Columbia, South Carolina

June 13, 2006

NOTICE OF RIGHT TO APPEAL

Petitioner is hereby notified that he has the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.